

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MICHELLE P. BOOTH,

Plaintiff,

vs.

RANDOLPH BYRD and
SCHNEIDER NATIONAL CARRIERS

Defendants

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CIVIL ACTION NO

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE:

Pursuant to 28 U.S.C. §§1332, 1441 and 1446, Defendants, Randolph Byrd and Schneider National Carriers, Inc., by and through their counsel of record, Rawle & Henderson LLP, hereby remove this matter to the United States District Court for the District of Delaware, and in support and grounds for removal thereof, respectfully aver as follows:

THE PARTIES

1. Plaintiff commenced a civil action in the Superior Court of Delaware, New Castle County, by filing a Complaint on or about December 4, 2021 for injuries

allegedly sustained in an December 9, 2019 motor vehicle accident. (A true and correct copy of Plaintiff's Complaint is attached hereto and marked as Exhibit "A".)

2. Plaintiff, Michelle Booth, is a citizen of Delaware. See Ex. A.

3. Plaintiff named Randolph Byrd and Schneider National Carriers, Inc. who are not citizens of Delaware.

4. At all times material hereto, defendant, Schneider National Carriers, Inc. was and is a Nevada corporation with its principal place of business located in Green Bay, Wisconsin.

5. At all material times, Randolph Byrd is a citizen of the Commonwealth of Virginia.

6. Diversity of citizenship within the meaning of 28 U.S.C. §1332, exists between plaintiffs and defendant since:

- (a) Plaintiff is a citizen and resident of the State of Delaware; and
- (b) Defendants are not citizens of the State of Delaware.

7. Furthermore, diversity of citizenship existed at the time the action sought to be removed was commenced and continues through the time of filing of this notice, such that defendant is entitled to removal pursuant to 28 U.S.C. §1441, as amended, and 28 U.S.C. §1446.

8. This Notice of Removal is timely filed in accordance with 28 U.S.C. §1446 (b) because the Notice of Removal is being filed within thirty (30) days after

receipt by defendants Randolph Byrd and Schneider National Carriers, Inc., of an “other paper from which it may be first ascertained that the case is one which is or has become removable” and it is less “than 1 year after the commencement of the action.”

JURISDICTION

1. This Honorable Court his court has original jurisdiction pursuant to 28 U.S.C. §1332 based on diversity of citizenship.

2. This action is subject to removal pursuant to 28 U.S.C. §1441 and 1446(b).

3. By way of factual background, plaintiff, Michelle Booth alleges that on December 9, 2019, she was involved in and motor vehicle accident with a tractor trailer owned by Schneider National Carriers and driven by its employee, Randolph Byrd. (*Ex. A., First Count ¶ 1*)

4. In the Complaint, plaintiff, Michelle Booth sustained injuries to her neck, back and other injuries...”which may be permanent, pain and suffering , mental distress...” *See id.* at ¶ 4.

5. Via email, dated March 28, 2022, plaintiff’s counsel provided documents pursuant to Superior Court Rule 3H. These documents included medical records and reports. *See email as Ex. B and made part hereof.*

6. The records included a narrative report from Dr. Samuel Romirowsky, Ph.D. who concluded that as a result of the accident, plaintiff suffers from two psychiatric conditions directly caused by the motor vehicle accident and will require additional counseling and medication. *The report is attached hereto and made part hereof as Ex. C.* (the report has been redacted to remove confidential information)

7. In addition, Dr. P. Tim Boulos authored a narrative report in which he diagnosed with “invertebral disc disorder with myelopathy cervical, spinal stenosis, lumbar region with neurogenic claudication; spondylolisthesis in the lumbar spine.” These conditions were related to the subject accident and are permanent impairment to the cervical and lumbar spine. He did not rule out the possibility of future surgery and believed she may require additional therapy, medication and pain management. *See Ex. D attached hereto and made part hereof.*

8. Pursuant to 28 U.S.C. § 1446(b),

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after the commencement of the action.

28 U.S.C. §1446(b) (emphasis added).

9. In light of the foregoing, Defendants, Randolph Byrd and Schneider National Carriers, Inc. aver based on the damages claimed by the plaintiff in the Complaint and medical records received to date that the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interests and costs.

10. Defendants also aver that the records received from counsel suggest she will claim permanent psychological conditions as well as permanent impairment to the cervical and lumbar spine which are attributable to this December 2019 accident. These medical records are the “other paper” from which it could first be ascertained that this matter was removable.

11. Based upon a fair reading of the Complaint and plaintiff, Michelle Booth’s medical reports claiming that the above injuries are as a direct result of the motor vehicle accident, plaintiff can assert a claim in which an amount in excess of the jurisdictional limit of \$75,000, exclusive of interest and costs, may be at stake.

12. This Removal is timely filed within thirty days of receipt of the information indicating the jurisdictional amount may be met pursuant to 28 U.S.C. §1446 (b).

13. Further, the removal of this matter is less than 1 year after the commencement of their action. See 28 U.S.C. 1446(b). and within 30 days of receipt of the attached medical records.

14. Therefore, this matter is removable to the U.S. District Court for the District of Delaware pursuant to 28 U.S.C. §1446(b).

15. Thus, diversity of citizenship within the meaning of 28 U.S.C. §1332, exists between plaintiffs and remaining defendants since:

- (a) Plaintiff is a citizen and resident of the State of Delaware; and
- (b) Defendants are not citizens of the State of Delaware.

16. Furthermore, diversity of citizenship existed no earlier than December 9, 2019 continues through the time of filing of this notice, such that defendants are entitled to removal pursuant to 28 U.S.C. §1441, as amended, and 28 U.S.C. §1446.

17. This notice of removal is being filed within thirty (30) days of the date that the damages of the plaintiff, Michelle Booth could be ascertained.

18. Venue is properly laid in this district because the action sought to be removed is pending in its district 28 U.S.C. §1446 (a).

19. Written notice of this Notice of Removal is being given to Plaintiff's counsel as required by law.

20. Pursuant to 28 U.S.C. §1146(d), a copy of this Notice of Removal is being filed with the Clerk of the Court of the Superior Court of Delaware, New Castle County.

21. In light of the foregoing, this matter should be properly removed from the Superior Court of Delaware, New Castle County and be heard before this Honorable Court.

WHEREFORE, defendants, Randolph Byrd and Schneider National Carriers, Inc. pray that the above-captioned action now pending in the Superior Court Delaware, New Castle County, be removed to this Honorable Court.

RAWLE & HENDERSON LLP



By: _____

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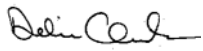
Date April 15, 2022

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Notice of Removal was filed electronically with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case, and also by first class U.S. Mail:

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RAWLE & HENDERSON LLP


By: _____
Delia A. Clark, Esquire

Dated: April 15, 2022